

The House Committee on Health and Human Services offers the following substitute to HB 675:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to
2 physicians, physician's assistants, and others, so as to provide for the certification of
3 polysomnographic technologists; to provide a short title; to provide legislative findings; to
4 provide for definitions; to provide for applications to be made to the Composite State Board
5 of Medical Examiners to obtain certification to practice polysomnography; to provide for
6 powers and duties of the board; to provide for certification standards and requirements; to
7 provide for the issuance and renewal of certification; to provide for permitted and prohibited
8 activities; to provide for an advisory committee; to provide for sanctions; to provide for
9 statutory construction; to provide for administrative procedures; to provide for related
10 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians,
14 physician's assistants, and others, is amended by adding a new article to read as follows:

15 "ARTICLE 10

16 43-34-270.

17 This article shall be known and may be cited as the 'Polysomnography Practice Act.'

18 43-34-271.

19 The General Assembly finds and declares that in order to protect the health and safety of
20 the general public, it is necessary to establish qualifications for and oversight of individuals
21 who practice polysomnography in this state.

43-34-272.

As used in this article, the term:

(1) 'Advisory committee' means the advisory committee on polysomnography established pursuant to Code Section 43-34-278.

(2) 'Board' means the Composite State Board of Medical Examiners as created by Code Section 43-34-21.

(3) 'Polysomnography' means the treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders. Polysomnography includes, but is not limited to, the process of analysis, monitoring, and recording of physiologic data during sleep and wakefulness to assist in the treatment of disorders, syndromes, and dysfunctions that are sleep-related, manifest during sleep, or disrupt normal sleep activities. Polysomnography also includes, but is not limited to, the therapeutic and diagnostic use of low-flow oxygen, the use of positive airway pressure including continuous positive airway pressure (CPAP) and bi-level modalities, adaptive servo-ventilation, and maintenance of nasal and oral airways that do not extend into the trachea.

(4) 'Polysomnographic technologist' means any person certified under this article to practice polysomnography under the supervision of a physician licensed under Article 2 of this chapter.

(5) 'Supervision' means that the supervising physician licensed under Article 2 of this chapter shall remain available, either in person or through telephonic or electronic means, at the time that polysomnography services are provided.

43-34-273.

The board, in consultation with the advisory committee, shall have the power and responsibility, with respect to polysomnographic technologists, to:

(1) Determine the qualifications and fitness of applicants for certification, renewal of the certificate, and reciprocal certification;

(2) Adopt and revise rules consistent with the laws of the State of Georgia that are necessary to conduct its business, carry out its duties, and administer this article; provided, however, that the initial rules necessary to administer this article shall be adopted no later than one year after the effective date of this article;

(3) Examine for, approve, issue, deny, revoke, suspend, and renew the certification of applicants and certificate holders under this article and conduct hearings in connection with these actions;

(4) Conduct hearings on complaints concerning violations of this article and the rules adopted under this article and cause the prosecution and enjoinder of the violations;

(5) Establish application, examination, certification, and renewal fees;

(6) Request and receive the assistance of state educational institutions or other state agencies and prepare information of consumer interest describing the regulatory functions of the board and describing the procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies;

(7) Solicit, receive, and accept gifts, grants, donations, or contributions from any person, firm, or corporation for the purposes of administering this article; and

(8) Establish continuing education requirements.

43-34-274.

(a) Each applicant for certification as a polysomnographic technologist shall meet the following requirements:

(1) Is at least 18 years of age;

(2) Has submitted a completed application as required by the board;

(3) Has submitted any fees required by the board;

(4)(A) Has valid, current credentials as a polysomnographic technologist issued by a national accrediting agency approved by the board; or

(B) Has graduated from a nationally accredited polysomnographic educational program, including but not limited to such programs accredited by the Commission on Accreditation of Allied Health Education Programs, the Board of Polysomnographic Technologists, or the Council on Higher Education Accreditation, as approved by the board;

(5)(A) Has passed a national certifying examination that has been approved by the board; provided, however, that an individual practicing polysomnography on June 30, 2009, shall have three years after the effective date of this article to pass a national certifying examination that has been approved by the board in order to retain certification under this article; or

(B) Has submitted proof to the board that he or she has been practicing polysomnography for at least five years in a manner that is acceptable to the board; and

(6) Has met such other requirements as may be prescribed by the board;

(b) In addition to the requirements specified in subsection (a) of this Code section, each polysomnographic technologist certified under this article shall work under the supervision of a physician licensed under Article 2 of this chapter and shall, in order to maintain certification, continue to work under the supervision of a physician licensed under Article 2 of this chapter.

43-34-275.

After evaluation of an application and other evidence submitted, the board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection.

43-34-276.

(a) Any document evidencing certification issued by the board is the property of the board and shall be surrendered on demand.

(b) The certificate holder shall display the document evidencing certification in an appropriate and public manner.

(c) The certificate holder shall inform the board of any change of address.

(d) The certificate shall be renewed biennially if the certificate holder is not in violation of this article at the time of application for renewal and if the applicant fulfills current requirements of continuing education as established by the board.

(e) Each person certified under this article is responsible for renewing his or her certificate before the expiration date.

(f) Under procedures and conditions established by the board, a certificate holder may request that his or her certification be declared inactive. The certificate holder may apply for active status at any time and upon meeting the conditions set by the board shall be declared active.

43-34-277.

(a) The board, in consultation with the advisory committee, may:

(1) Refuse to grant or renew certification to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the certificate holder;

(3) Suspend the certificate of any certificate holder for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said certificate;

(4) Limit or restrict any certificate as the board deems necessary for the protection of the public;

(5) Revoke any certificate;

(6) Levy a fine; and

(7) Condition any penalty or withhold formal disposition of any matter pending the applicant's or certificate holder's submission to such care, counseling, or treatment as the board may direct.

(b) The board may take any action specified in subsection (a) of this Code section upon a finding by the board that the certificate holder or applicant has:

(1) Failed to demonstrate the qualifications or standards for certification contained in this article, or under the laws, rules, or regulations under which certification is sought or held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for certification, and, if the board is not satisfied as to the certification holder or applicant's qualifications, it may deny certification without a prior hearing; provided, however, that the certificate holder or applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice certified under this article or on any document connected therewith, or practiced fraud or deceit or intentionally made any false statement in obtaining certification to practice a certified business or profession, or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States. As used in this paragraph and paragraph (4) of this subsection, the term 'felony' shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term 'conviction' shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony or any crime involving moral turpitude where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her certificate under this article revoked, suspended, or annulled by any lawful authority other than the board; or had other disciplinary action taken against him or her by any such lawful authority other than the board; or was refused the renewal of certification by any such lawful authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness

of the certificate holder or applicant to practice as certified under this article, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of polysomnography but shows that the certificate holder or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness. Unprofessional conduct shall include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing practice of the business or profession certified under this article;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any uncertified person or any certificate holder whose certificate has been suspended or revoked by the board to engage in any practice outside the scope of any disciplinary limitation placed upon the certificate holder by the board;

(8) Violated, without regard to whether the violation is criminally punishable, a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority, which statute, law, or rule or regulation relates to or in part regulates the practice certified under this article, when the certificate holder or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or certification reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction inside or outside this state. Any such adjudication shall automatically suspend the certification of any such person and shall prevent the reissuance or renewal of any certification so suspended for as long as the adjudication of incompetence is in effect; or

(10) Displayed an inability to practice polysomnography with reasonable skill and safety to the public or has become unable to practice polysomnography with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material.

43-34-278.

The board shall appoint an advisory committee on polysomnography. The advisory committee shall be composed of five persons. Such members shall include one or more persons engaged in the practice of polysomnography, one or more persons licensed under Article 2 of this chapter who specializes in sleep medicine, and such other members as the board in its discretion may determine. Members shall receive no compensation for service on the advisory committee. The advisory committee shall advise the board on issues relating to certification and regulation of polysomnographic technologists under this article, including education and experience requirements. The advisory committee shall have such

200 other advisory duties and responsibilities in accordance with this article and as the board
201 may determine.

202 43-34-279.

203 (a) On and after one year after the effective date of this article, unless certified under this
204 article or exempted under subsection (b) of this Code section, no person shall:

205 (1) Practice polysomnography;

206 (2) Represent himself or herself to be a polysomnographic technologist who is certified
207 under this article; or

208 (3) Attach the title 'certified polysomnographic technologist' to his or her name.

209 (b) The prohibition in subsection (a) of this Code section shall not apply to the practice of
210 polysomnography which is an integral part of the program of study by students enrolled as
211 a trainee in a polysomnography education program recognized by the board. Students
212 enrolled in polysomnography education programs shall only provide polysomnography
213 care under direct clinical supervision.

214 (c) Any person violating the prohibition of subsection (a) of this Code section shall be
215 guilty of a misdemeanor.

216 (d) Nothing in this article shall be construed to permit the practice of medicine as defined
217 in Article 2 of this chapter by polysomnographic technologists.

218 (e) Nothing in this article shall be construed to prohibit a health care provider licensed in
219 this state from engaging in the practice for which he or she is licensed, including, but not
220 limited to, respiratory care professionals certified under Article 6 of this chapter.

221 (f) Nothing in this article shall be construed to authorize a polysomnographic technologist
222 or trainee to treat, manage, control, educate, or care for patients other than those with sleep
223 disorders or to provide diagnostic testing for patients other than those with suspected sleep
224 disorders.

225 43-34-280.

226 Proceedings under this article shall be governed by Chapter 13 of Title 50, the 'Georgia
227 Administrative Procedure Act.'

228 **SECTION 2.**

229 This Act shall become effective upon its approval by the Governor or upon its becoming law
230 without such approval.

231 **SECTION 3.**

232 All laws and parts of laws in conflict with this Act are repealed.